

¹ 5 U.S.C. § 8101 *et seq.*

and lower back lifting bags. Following her injury, she worked part time in a limited-duty assignment. OWCP accepted the claim for a ligament sprain of the lumbar spine and paid wage-loss compensation for intermittent time lost from work beginning December 17, 2015. On January 27, 2016 Dr. Frank J. Kromelis, an attending Board-certified internist, released her to resume work for eight hours per day with restrictions of not lifting over 15 pounds. OWCP continued to pay appellant intermittent wage-loss compensation for medical appointments.

Appellant, on April 25, 2016, filed a claim for compensation (Form CA-7), requesting wage-loss compensation from April 17 to 23, 2016.

By letter dated April 28, 2016, OWCP requested that appellant submit medical evidence to establish that she was unable to perform her modified employment from April 17 to 23, 2016. It noted that the evidence of record supported that the employing establishment had limited-duty work available within the limitations set forth by her physician.

In a progress report dated April 15, 2016, Dr. Kromelis obtained a history of appellant experiencing pronounced low back pain after lifting bags. He provided examination findings and diagnosed a lumbar ligament sprain. Dr. Kromelis advised that appellant had been taken off work by Dr. Stephen I. Esses, a Board-certified orthopedic surgeon.

In an April 15, 2016 work status form report, Dr. Kromelis determined that appellant could resume work with restrictions on April 15, 2016, including no lifting more than 15 pounds.

Dr. Esses, in a work status form dated April 21, 2016, found that appellant could resume work on April 24, 2016 with restrictions. The form provided the date of injury as October 9, 2015 and indicated that she experienced sharp pain in her low back after lifting bags.

In a report dated April 21, 2016, Dr. Esses reviewed a November 25, 2015 magnetic resonance imaging (MRI) scan study showing L2-3 and L3-4 moderate stenosis and L4-5 severe stenosis. He noted that an electromyogram (EMG) revealed radiculopathy on the left at L5-S1. Dr. Esses opined that appellant's condition had improved and that she could return to work with restrictions, including no lifting over 10 pounds.

By decision dated August 17, 2016, OWCP denied appellant's claim for compensation from April 17 to 23, 2016. It found that she had not submitted rationalized medical evidence supporting that she was unable to perform her light-duty work from April 17 to 23, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.² For each period of disability claimed, the employee has the burden of proof to establish that she was disabled for work as a result of the accepted employment injury.³ Whether a particular injury causes an

² See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

³ See *Amelia S. Jefferson*, *id.*

employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁴

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁶ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁸

ANALYSIS

OWCP accepted that appellant sustained a sprain of the ligaments of her lumbar spine due to an October 9, 2015 employment injury. She worked limited duty following her injury. On April 25, 2006 appellant filed a claim for compensation for lost time from work for the period April 17 to 23, 2016. The employing establishment confirmed that there was work available within her restrictions.

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed disability for that period and the accepted conditions.⁹ The Board finds that she failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injury.¹⁰

On April 15, 2016 Dr. Kromelis discussed appellant's history of low back pain after lifting bags. He diagnosed a lumbar ligament sprain and noted that Dr. Esses had taken her off work. In a work status form dated April 15, 2016, Dr. Kromelis found that appellant could work with restrictions of no lifting over 15 pounds. While he noted that Dr. Esses indicated that she

⁴ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁵ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁶ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁷ *Merle J. Marceau*, 53 ECAB 197 (2001).

⁸ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ See *J.S.*, Docket No. 16-1014 (issued October 27, 2016).

¹⁰ See *Alfredo Rodriguez*, 47 ECAB 437 (1996).

was not able to work, he did not render an independent finding of total disability but instead released her to resume her modified employment.

Dr. Esses, on April 21, 2016, reviewed the findings of a November 25, 2015 MRI scan study of moderate stenosis at L2-3 and L3-4 and severe stenosis at L4-5, and the findings on an EMG study of left radiculopathy at L5-S1. He found that appellant had improved and that she could resume with restrictions of no lifting over 10 pounds. Dr. Esses also completed a form report on April 21, 2015 which indicated that she experienced low back pain after lifting bags and provided the injury date as October 9, 2015. He determined that appellant could resume work on April 24, 2016 with restrictions. Dr. Esses did not specifically address the dates of disability claimed or provide medical rationale explaining whether and why she was disabled from April 17 to 23, 2016. Consequently, his report is of little probative value.¹¹

As noted, appellant must submit reasoned medical evidence directly addressing the specific dates of disability for work for which she claims compensation.¹² She did not provide medical evidence containing a rationalized opinion supporting that she could not work from April 17 to 23, 2016 due to her accepted condition, and thus did not meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established disability from April 17 to 23, 2016 causally related to her October 9, 2015 employment injury.

¹¹ See C.S., Docket No. 08-22178 (issued August 7, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹² See K.A., Docket No. 16-0592 (issued October 26, 2016).

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board